

ORDINANCE NO. 19-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN
ADDING CHAPTER 115 TO THE AUBURN MUNICIPAL CODE
REGULATING WIRELESS TELECOMMUNICATION FACILITIES

**THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS
FOLLOWS:**

Section One: Code Adoption. Chapter 115 of the Auburn Municipal Code entitled "Wireless Telecommunication Facilities" is hereby added to the Auburn Municipal Code as set forth in the attached Exhibit "A".

Section Two: California Environmental Quality Act. The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the meeting on the matter held by the City Council, and hereby determines that the adoption of this Ordinance will not have a significant effect on the environment. This Ordinance is therefore exempt from California Environmental Quality Act (CEQA) review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations. This Ordinance will not result in a significant foreseeable environmental impact. To the extent this Ordinance is determined to be a project within the meaning of CEQA, it is categorically exempt under CEQA Guidelines section 15301 (Existing Facilities) and CEQA Guidelines section 15311 (Accessory Structures).

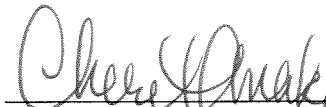
Section Three: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council of the City of Auburn hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section Four: Inconsistent Provisions. Any provision of the Auburn Municipal Code or appendices thereto inconsistent with the

provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Ordinance.

Section Five: Publication and Effective Date. This ordinance shall take effect 30 days after final adoption. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

DATED: March 25, 2019


Cheryl Maki, Mayor

ATTEST:


Amy Lind, City Clerk

I, Amy Lind, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 25th day of March 2019 by the following vote on roll call:

Ayes: Amara, Berlant, Kirby, Spokely, Maki
Noes:
Absent:
Abstain:


Amy Lind, City Clerk

EXHIBIT "A"

CHAPTER 115: WIRELESS TELECOMMUNICATION FACILITIES

Section:

- 115.001 – Purpose and Intent
- 115.002 – Definitions
- 115.003 – Applicability and Permit Requirement
- 115.004 – Standards for All Personal Wireless Telecommunication Facilities
- 115.005 – Standards for Personal Wireless Telecommunication Facilities not Located Within a Public Right-of-Way
- 115.006 – Standards for Personal Wireless Telecommunication Facilities Located Within Public Rights-of-Way
- 115.007 – Wireless Facility Minor Modification Permit
- 115.008 – Requirements for Small Wireless Facilities Permits
- 115.009 – Appeals
- 115.010 – Maintenance
- 115.011 – Ownership Transfers
- 115.012 – Revocation of a Wireless Facilities Permit
- 115.013 – Violations
- 115.014 – Severability

§ 115.001 PURPOSE AND INTENT.

The City of Auburn intends for this chapter to establish reasonable, uniform and comprehensive standards and procedures for the deployment, construction, installation, collocation, modification, operation, relocation and removal of wireless telecommunication facilities within the city's territorial boundaries, consistent with and to the extent permitted under federal and California law. The city recognizes that the unrestricted installation of redundant personal wireless telecommunication facilities is contrary to the city's efforts to stabilize economic and social aspects of neighborhood environments, and to promote the health, safety and welfare of the city.

In enacting this section, the city intends to:

- (A) Promote and protect the health, safety, comfort, convenience and general welfare of residents and business; and
- (B) Protect the benefits derived by the city, its residents and the general public from access to personal wireless services while minimizing, to the greatest extent feasible, the redundancy of personal wireless telecommunication facilities in the city; and

- (C) Balance these goals, by permitting the installation and operation of wireless telecommunication facilities where they are needed, while reducing, to the greatest extent feasible, adverse economic, safety and/or aesthetic impacts on nearby properties and the community as a whole; and
- (D) This chapter shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, applicable state laws, and administrative and court decisions and determinations relating to same; and
- (E) This chapter is intended to regulate all uses of wireless communications in the city, including uses by public utilities, to the extent of the city's power to regulate the use of land under federal and state law, but not to exceed the scope of the city's authority.

§ 115.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Accessory equipment. Any equipment installed, mounted, operated or maintained in close proximity to a personal wireless telecommunication facility to provide power to the personal wireless telecommunication facility or to receive, transmit or store signals or information received by or sent from a personal wireless telecommunication facility.

The Act. The Federal Telecommunications Act, January 31, 1996.

Antenna. An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services.

Antenna Equipment. Equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

Applicable law. All applicable Federal, State and local law, ordinances, codes, rules, regulations and orders, as the same may be amended from time to time.

Applicant. Includes any person or entity submitting an application to install a personal wireless telecommunication facility under this chapter.

Base station. The equipment and non-tower supporting structure at a fixed location that enables Federal Communications Commission licensed or authorized wireless telecommunications between user equipment and a communications network.

City. The City of Auburn.

Collocation. The mounting or installation of additional wireless transmission equipment at an existing wireless facility; and/or modification of a structure for the purpose of mounting or installing an antenna facility on that structure.

Council. The City Council of the City of Auburn.

Director. The City of Auburn Director of Planning and Public Works or designee.

FCC. The Federal Communications Commission or any successor to that agency.

In-kind call testing. Testing designed to measure the gap in coverage asserted by an applicant. If a claimed gap is for in-building coverage, then in-building call testing must be performed to establish the existence or absence of such a gap unless the applicant provides a sworn affidavit demonstrating good faith but unsuccessful attempts to secure access to buildings to conduct such testing and the circumstances that prevented the applicant from conducting such testing. Claimed gaps in service for "in-vehicle" or "open-air" service may be demonstrated by call testing performed in vehicles or in the open.

Least intrusive means. The location or design of a personal wireless telecommunication facility addresses a significant gap in an applicant's personal communication service while doing the least disservice to the policy objectives of this chapter. Analysis of whether a proposal constitutes the least intrusive means shall include consideration of

means to close an asserted significant gap by co-locating a new personal wireless telecommunication facility on the site, pole, tower, or other structure of an existing personal wireless telecommunication facility.

Monopole. A structure composed of a single spire, pole, or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm, and similar monopoles camouflaged to resemble faux objects attached on a monopole.

MPE. Maximum permissible exposure.

Open Space. (1) Land which is zoned Open Space and Conservation District (OSC); (2) Land in residential zones upon which structures may not be developed by virtue of a restriction on title; (3) All common areas, public and private parks, slope easements, recreational areas and open portions of recreational facilities; and (4) Any other area owned by a homeowners association or similar entity.

Personal communication service. Commercial mobile services provided under a license issued by the FCC.

Personal wireless telecommunication facility, wireless telecommunication facility, or wireless facility. A structure, antenna, pole, tower, equipment, accessory equipment and related improvements used, or designed to be used, to provide wireless transmission of voice, data, images or other information, including, but not limited to, cellular phone service, personal communication service and paging service.

RF. Radio frequency.

Shot Clock. The timeframe within which the city shall act on a wireless application, as defined by the FCC and as may be amended from time to time.

Significant gap. As applied to an applicant's personal communication service or the coverage of its personal wireless telecommunication facilities, significant gap is intended to be defined in this chapter consistently with the use of that term in the Telecommunications Act of 1996 and case law construing that statute. Provided that neither the Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:

1. A significant gap may be demonstrated by in-kind call testing.
2. The city shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider: (a) the number of calls conducted in the call test; (b) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions; and (c) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.
3. A significant gap may be measured by:
 - a. The number of people affected by the asserted gap in service;
 - b. Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage;
 - c. Whether the asserted gap affects a state highway or an arterial street which carries significant amounts of traffic.

Small Wireless Facility. A small wireless facility as defined by the FCC and that meets the following requirements:

1. The small wireless facilities:
 - a. Are mounted on structures 50 feet or less in height including their antennas, or
 - b. Are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - c. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, is no more than 28 cubic feet in volume;
4. The facilities do not require antenna structure registration under part 47 C.F.R. section 17.1 et seq.

5. The facilities are not located on Tribal lands; and
6. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

Stealth facility or camouflaged facility. Any personal wireless telecommunication facility which is designed to substantially blend into the surrounding environment by, among other things, architecturally integrating into or on a structure or otherwise using design elements to conceal antennas, antenna supports, poles, equipment, cabinets, faux trees, equipment housing and enclosure; and related above-ground accessory equipment painted or wrapped.

Transmission equipment or wireless transmission equipment. Any equipment that facilitates transmission for any Federal Communications Commission licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supplies.

Wireless. Any Federal Communications Commission licensed or authorized wireless telecommunications service.

Wireless tower or telecommunications tower. Any structure, including a freestanding mast, pole, monopole, guyed tower, lattice tower, freestanding tower or other structure, designed and constructed for the primary purpose of supporting any Federal Communications Commission licensed or authorized wireless telecommunications facility antennas and their associated facilities.

§ 115.003 APPLICABILITY

This chapter applies to all proposed new or modified personal wireless telecommunication facilities, as follows:

- (A) All applications for approval of the installation of new personal wireless telecommunication facilities in the city.
- (B) All facilities for which applications were received by the public works department but not approved prior to the effective date of the ordinance codifying this section, shall comply with the regulations and guidelines of this section.
- (C) All facilities for which applications were approved by the city on or prior to the effective date of the ordinance codifying

this section shall be exempt from this section, except for the requirements of Section 115.004(H).

- (D) All facilities for which applications have been previously approved, but are now or hereafter modified.

§ 115.004 STANDARDS FOR ALL PERSONAL WIRELESS TELECOMMUNICATION FACILITIES

The Auburn City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this chapter.

(A). *Wireless Facility Permit-Administrative Review.* A wireless facility permit, subject to the Director's prior review and approval in accordance with the procedures and design regulations in this chapter, is required for:

1. Any wireless telecommunication facility proposed on private property in a preferred location (as specified in 115.004(E)) and that would be compliant with all applicable development standards in section 115.004(F).
2. Any wireless facility proposed to be located in the public rights-of way that would be compliant with the applicable development standards in section §115.005.

(B) *Wireless Facility Permit-Public Hearing Review.* A Wireless Facility Permit, subject to the Planning Commission's prior review and approval in accordance with the procedures and design regulations in this chapter, is required for:

1. Any wireless telecommunication facility proposed on private property located in or within 1,000 feet from a residential, historic and open space district;
2. Any wireless telecommunication facility that requires a limited exception pursuant to this chapter;
3. Any wireless telecommunication facility subject to an administrative review process but has been referred to the Planning Commission by the Director;

4. Any wireless facility not identified as subject to an administrative review process in this chapter.

(C) *Permit Requirements.* No new personal wireless telecommunication facility shall be installed until the applicant or operator has obtained: (i) a wireless facility permit, (ii) an encroachment permit from the public works department (if applicable), and (iii) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or a tree permit. All modifications to an existing personal wireless telecommunications facility that do not meet the findings of approval required for a wireless facility minor modification permit as specified in Section 115.007 shall be subject to the approval of (i) a wireless facility permit, in addition to (ii) an encroachment permit from the Public Works and Planning Department (if applicable), and (iii) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or a tree permit.

(D) *Wireless Facility Permit Application Content.* Applications for the approval of wireless facility permits for personal wireless telecommunication facilities shall include, but are not necessarily limited to the following information:

- (1) *Written Documentation.* Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location in accordance with the location requirements of Section 115.004(E); and
- (2) *Visual Simulations.* The applicant shall submit site photographs and scaled photo simulations that show the existing location and the proposed facility superimposed on photographs of the site and surroundings, to assist the city in assessing the visual impacts of the proposed facility and its compliance with the provisions of this chapter.
- (3) *Scaled Depiction.* For new facilities, the plans shall include (in plan view and elevations) a scaled depiction of the maximum permitted increase as authorized by Section 6409(a) of the 2012 Middle Class Tax Relief Act, using the proposed project as a baseline.
- (4) *Master Plan.* A Master Plan which identifies the location of the proposed facility in relation to all existing and potential facilities maintained by the operator intended to serve the city. The master

plan shall reflect all potential locations that are reasonably anticipated for construction within four years of submittal of the application. Applicants may not file, and the city shall not accept, applications that are not consistent with the master plan for a period of two years from approval of a wireless facility permit unless: (i) the applicant demonstrates materially changed conditions which could not have been reasonably anticipated to justify the need for a personal wireless telecommunication facility site not shown on a master plan submitted to the city within the prior two years or (ii) the applicant establishes before the commission that a new personal wireless telecommunication facility is necessary to close a significant gap in the applicant's personal communication service, and the proposed new installation is the least intrusive means to do so.

- (5) *Site Analysis.* A site analysis which identifies a minimum of five other feasible locations within or without the city which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum. The alternative site analysis shall include at least one collocation site.
- (6) *An affirmation,* under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination Of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power".
- (7) *A statement* signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application.
- (8) *Noise Study.* A noise study, prepared, signed, and sealed by a California-licensed engineer, for the proposed personal wireless telecommunication facility including, but not limited to, equipment,

such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed modification(s) will not alter the existing noise levels or operational equipment that creates noise.

- (9) *RF Compliance Report.* The applicant shall submit an RF exposure compliance report that certifies that the proposed facility, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the city. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (10) *A written statement* of the applicant's willingness to allow other carriers to collocate on the proposed personal wireless telecommunication facility wherever technically and economically feasible and aesthetically desirable.
- (11) *Title Report and Property Owner's Authorization.* For any small wireless facility proposed to be installed on any private property not owned or controlled by the city, the applicant must submit: (i) a title report issued within 30 days from the date the applicant filed the application; and (ii) if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept a wireless facility permit in connection with the subject property.
- (12) *Such other information* as the Director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code Section 65940, or to respond to changes in law or technology.
- (13) *An application* for a personal wireless telecommunication facility in a public right-of-way for which the applicant claims entitlement under California Public Utilities Code Section 7901 shall be accompanied by evidence satisfactory to the Director that the applicant is a telephone corporation or has written authorization to act as an agent for a telephone corporation.

(E) *Wireless Facility Permit Preferred Zones and Locations.* When doing so would not conflict with one (1) of the standards set forth in this subsection (E) or with federal law, personal wireless telecommunication facilities subject to the approval of a wireless facility permit shall be located in the most appropriate location as described in this subsection (E), which range from the most appropriate to the least appropriate. Nothing in this section shall detract from the requirements of subsection (F) below.

Most Preferred Locations:

- (1) Collocation on an existing facility in a commercial or industrial zone;
- (2) Collocation on an existing structure or utility pole in a commercial or industrial zone;
- (3) Collocation on an existing facility in a public facility or recreation open space district zone;
- (4) Location on a new structure in a commercial or industrial zone;

Least Preferred Locations:

- (1) Location on an existing structure or utility pole in a public facility or recreation open space district;
- (2) Location on a new structure in a public facility or recreation zone open space district;
- (3) Location or collocation on an existing facility in the historic district.

For purposes of these location preferences, the applicant's proposed location in the public rights-of-way shall be classified by the same zoning district that applies to the nearest adjacent parcel.

No new facility may be placed in a less appropriate area unless the applicant demonstrates to the satisfaction of the city that no more appropriate locations can feasibly serve the area the facility is intended to serve provided, however, that the city may authorize a facility to be established in a less appropriate location if doing so is necessary to prevent substantial aesthetic impacts.

(F) *Design and Development Standards.* Personal wireless telecommunication facilities shall be designed and maintained as follows:

- (1) All new personal wireless telecommunication facilities shall be set back at least one thousand (1,000) feet from schools, dwelling units and parks, as measured from the closest point of the personal wireless telecommunication facility (including accessory equipment) to the applicable property line, unless an applicant establishes that a lesser setback is necessary to close a significant gap in the applicant's personal communication service, and the proposed personal wireless telecommunication facility is the least intrusive means to do so. An applicant who seeks to increase the height of an existing personal wireless telecommunication facility, or of its antennas, located less than one thousand (1,000) feet from a school, dwelling unit or park and who is subject to the approval of a wireless facility permit for the proposed height increase must establish that such increase is necessary to close a significant gap in the applicant's personal communication service, and the proposed increase is the least intrusive means to do so.
- (2) Facilities shall have subdued colors and non-reflective materials which blend with the materials and colors of the surrounding area and structures.
- (3) Unless otherwise prohibited by state or federal law, all equipment not located on a roof shall be underground; any equipment that is not undergrounded shall be screened from adjacent uses to the maximum extent feasible.
- (4) The facilities shall not bear any signs or advertising devices other than certification, warning or other signage required by law or expressly permitted by the city.
- (5) At no time shall equipment noise (including air conditioning units) from any facility exceed the applicable noise limits established in this Code; provided, however, that for any such facility located within five hundred (500) feet of any property zoned open space or residential, or improved with a residential use, such equipment noise shall at no time be audible at the property line of any open space or residentially zoned, or residentially improved property.
- (6) If the majority of radio frequency coverage from the proposed facility is outside the city limits, the applicant must, in addition to the other requirements of this section, prove that the applicant is unable to locate the proposed new facility within the locale or locales that will receive the majority of the coverage from the proposed personal wireless telecommunications facility, and that no other feasible location for the facility exists outside of the city limits. That an applicant for a wireless facility permit in the city has been denied a wireless facility, antenna, or wireless coverage

in another jurisdiction shall not be considered evidence or proof that the applicant is unable to locate in another jurisdiction.

(G) *Peer and Independent Expert Review.* The City Council authorizes the Director to select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues in connection with any permit application. The city may retain one (1) or more independent, qualified consultants to review any application for a wireless facility permit for a personal wireless telecommunication facility or for a wireless facility minor modification permit. The review is intended to be a review of technical aspects of the proposed wireless telecommunication facility or modification of an existing wireless telecommunication facility and shall address any or all of the following, as applicable:

- (1) For wireless facility permits, whether the proposed wireless telecommunication facility is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
- (2) The accuracy and completeness of submissions;
- (3) For wireless facility permits, technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
- (4) The applicability of analysis techniques and methodologies;
- (5) For wireless facility permits, the viability of alternative sites and alternative designs; and
- (6) For wireless facility permits, an analysis of the potential expansion that would be considered an eligible facility request under Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012; and
- (7) Any other specific technical issues designated by the city.

The cost of the review shall be paid by the applicant through a deposit estimated to cover the cost of the independent review, as established by the City Council.

(H) *Conditions of Approval.* All facilities subject to a wireless facility permit or wireless facility minor modification permit approved under this section shall be subject to the following conditions, as applicable:

- (1) Facilities shall not bear any signs or advertising devices other than legally required certification, warning, or other required seals or signage, or as expressly authorized by the city.

(2) *Abandonment.*

- (a) Applicant shall submit to the city a list of all telecommunications facilities and current operational status. Any facilities that are identified as not operational for period of (90) days shall be deemed abandoned.
 - (b) Personal wireless telecommunication facilities that are no longer operating shall be removed at the expense of the applicant, operator, or owner no later than ninety (90) days after the discontinuation of use. Disuse for ninety (90) days or more shall also constitute a voluntary termination by the applicant of any land use entitlement under this Code or any predecessor to this Code.
 - (c) The Director shall send a written notice of the determination of non-operation to the owner and operator of the personal wireless telecommunication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure Section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.
 - (d) The operator of a facility shall notify the city in writing of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations. Upon completion of abandonment, the site shall be restored to its original condition at the expense of the applicant, operator, or owner.
 - (e) All facilities not removed within the required ninety-day period shall be in violation of this Code. In the event the city removes a disused facility upon the failure of the applicant, operator, or owner to timely do so, the applicant, operator, and owner shall be jointly and severally liable for the payment of all costs and expenses the city incurs for the removal of the facilities, including legal fees and costs.
- (3) *Indemnification.* The applicant, operator of a facility and property owner (when applicable) shall defend, indemnify and hold the City and its elective and appointed boards, commissions, officers, agents, consultants and employees harmless from and against all demands, liabilities, costs (including attorneys' fees), or damages arising from the city's

review and/or approval of the design, construction, operation, location, inspection or maintenance of the facility.

(4) *Removal of Unsafe Facilities.* If, at any time after ten (10) years of the issuance of a building permit or encroachment permit, or any shorter period permitted by Government Code Section 65964(b), any personal wireless telecommunication facility becomes incompatible with public health, safety or welfare, as determined by the city, the applicant or operator of the facility shall, upon notice from the city and at the applicant's or operator's own expense, remove that facility. Written notice of a determination pursuant to this paragraph shall be sent to the owner and operator of the personal wireless telecommunication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure Section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.

- (a) The owner or operator of any personal wireless telecommunication facility approved by a wireless facility permit under this subsection (F) shall cooperate with the Director to: (1) verify that the facility design conforms with relevant building and safety requirements; and (2) verify that the facility complies with the requirements of Chapter 115 of the Auburn Municipal Code.
- (b) Prior to the issuance of a building permit or encroachment permit, the applicant or owner/operator of the facility shall pay for and provide a performance bond, which shall be in effect until all facilities are fully and completely removed and the site reasonably returned to its original condition. The purpose of this bond is to cover the applicant's or owner/operator of the facility's obligation under the conditions of approval and the City of Auburn Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. (The amount of the performance bond shall be set by the Director on a case-specific basis and in an amount reasonably related to the obligations

required under this Code and all conditions of approval, and shall be specified in the conditions of approval.)

- (c) An applicant shall not transfer a permit to any person or entity prior to completion of construction of a personal wireless telecommunication facility.
- (d) The applicant shall submit as-built photographs of the facility within ninety (90) days of installation of the facility, detailing the installed equipment.
- (e) A personal wireless telecommunication facility approved by a wireless facility permit may operate only until the tenth anniversary of the date it is first placed into service, unless that sunset date is extended by additional term(s) not to exceed ten (10) years pursuant to a wireless facility permit issued under this Chapter 115. There is no limit to the number of times the sunset date for a facility may be extended.

(I) Application Review, Notice, and Hearing.

Administrative Review Process. Each application for a wireless facility permit shall be reviewed by the Director in the following manner:

- (1) Within thirty (30) calendar days after the Director receives a duly-filed application, the Director shall review the application for completeness, and if any application does not contain all the materials required shall send written notice to the applicant that identifies the missing or incomplete requirements.
- (2) Not less than ten (10) calendar days prior to the date on which the administrative decision will be made, the Director shall give notice of the proposed requested application by mail or delivery to record owner located within three hundred (300) feet of the proposed site.
- (3) If no hearing is requested by the applicant or other affected person, or if no responses are received in opposition to the request within the prescribed time period, then the Director shall issue the permit subject to conditions determined by the Director.
- (4) If a hearing is requested by the applicant or other affected person, or if any responses are received in opposition to the request, the Director shall forward the application to the Planning Commission for formal public hearing and

considerations. When the application is forwarded to the Planning Commission, the applicant shall be responsible for paying any additional application fees and providing any additional permit application materials.

Under federal law, the city must approve or deny an application for a Wireless Facility Permit, together with any other city permits required for a proposed wireless facility, within sixty (60) days after the applicant submits the application for a wireless facility permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a wireless facility permit application within the sixty-day review period, excluding tolling period, will result in the permit being deemed granted by operation of law.

(J) *Public Hearing Review Process.* Each application for a wireless facility permit shall be reviewed by the Director in the following manner:

(1) Within 30 calendar days after the Director receives a duly-filed application, the Director shall review the application for completeness, and if any application does not contain all the materials required shall send written notice to the applicant that identifies the missing or incomplete requirements.

(2) Prior to a duly noticed public hearing, the Director shall give notice of the proposed requested application by mail or delivery to record of owner located within three hundred (300) feet of the proposed site.

Under federal law, the city must approve or deny an application for a wireless facility permit, together with any other city permits required for a proposed wireless facility, within sixty (60) days after the applicant submits the application for a Wireless Facility Permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a Wireless Facility Permit application within the sixty-day review period, excluding tolling period, will result in the permit being deemed granted by operation of law.

(I) *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this chapter will be automatically withdrawn by the

applicant when the applicant fails to tender a substantive response to the Director within sixty (60) calendar days after the Director deems the application incomplete in a written notice to the applicant. As used in this subsection (G), a "substantive response" must include the materials identified as incomplete in the Director's notice.

(K) *Wireless Facility Permit Findings.* No wireless facility permit for a proposed new or substantial modification to a personal wireless telecommunication facility may be approved unless the Director reviewing the application finds or the city finds, at a public hearing for which notice was provided under the standards set forth in Government Code Sections 65090 and 65091, as follows:

- (1) The applicant has demonstrated by clear and convincing evidence that the facility is necessary to close a significant gap in the operator's service coverage. Such evidence shall include in-kind call testing of existing facilities within the area the applicant contends is a significant gap in coverage to be served by the facility.
- (2) The applicant has demonstrated by clear and convincing evidence that no feasible alternate site exists that would close a significant gap in the operator's service coverage which alternative site is a more appropriate location for the facility under the standards of Chapter 115 of the Auburn Municipal Code.
- (3) The facility satisfies the location requirements of Section 115.004(E)(3) of the Auburn Municipal Code.

§ 115.005 STANDARDS FOR PERSONAL WIRELESS TELECOMMUNICATION FACILITIES NOT LOCATED WITHIN A PUBLIC RIGHT-OF-WAY

In addition to the requirements in section 115.004 above, all personal wireless telecommunication facilities subject to the approval of a wireless facility permit and not located within a public right-of-way shall comply with the following requirements:

(A) *Location Requirements.* To minimize aesthetic and visual impacts on the community, personal wireless telecommunication facilities shall be located according to the following standards:

- (1) *General Requirements.*
 - (a) A freestanding telecommunications tower or monopole shall be set back a distance of at least one hundred fifty

(150) percent of the height of the tower from the nearest property line of any residentially zoned or occupied lot.

- (2) *Restricted Locations.* Personal wireless telecommunication facilities located in any of the following locations must be designed as a stealth facility:
- (a) Within any nonresidential zone on a site that contains a legally established residential use; and
 - (b) On any property that is designated within a Historic District or Open Space District by the city.
- (3) *Prohibited Locations.* No personal wireless telecommunication facility shall be established within any residential zones (including areas set aside for open space, parks or playgrounds), conservation or natural resources land, or open space land.

Any wireless telecommunication facility proposed for a site within any open space land shall not be deemed a "public utility" as that term is otherwise defined and understood in the Auburn Municipal Code regarding development in such open space land.

- (4) *Guidelines for Placement on Structures.* Antennas shall be mounted on structures utilizing the methods described below. If an antenna cannot be mounted as set forth in subsection (i), it may be mounted in accordance with subsection (ii). If an antenna cannot be mounted as set forth in either subsection (i) or (ii), it may be mounted in accordance with subsection (iii):
- (i) A stealth facility mounted on an existing structure or collocated on an existing tower;
 - (ii) A stealth facility mounted on an existing steel or concrete pole, including a light standard; or
 - (iii) A stealth facility mounted on a new steel, wood or concrete pole but only if applicants can show that there is no existing infrastructure within 200 feet along the subject right-of-way that is available and technically feasible to support a small cell.

(B) *Design and Development Standards.* Personal wireless telecommunication facilities shall be designed and maintained as follows:

- (1) Building-mounted facilities shall be designed and constructed to be fully screened in a manner that is compatible in color, texture and type of material with the architecture of the building on which the facility is mounted.

- (2) All accessory equipment associated with the operation of a personal wireless telecommunication facility shall be located within a building enclosure or underground vault that complies with the development standards of the zoning district in which the accessory equipment is located.

(C) *City Council Approval Required.* Notwithstanding Section 115.005(A)(3), personal wireless telecommunication facilities subject to the approval of a wireless facility permit may be permitted in a prohibited location only if the applicant obtains a wireless facility permit from the City Council following a public hearing and recommendation from the Planning Commission, and provides technically sufficient and conclusive proof that the proposed location is necessary for provision of wireless services to substantial areas of the city, that it is necessary to close a significant gap in the operator's coverage and that there are no less intrusive alternative means to close that significant gap.

§ 115.006 STANDARDS FOR PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES LOCATED WITHIN PUBLIC RIGHTS-OF-WAY

In addition to the requirements in section 115.005 above, all personal wireless telecommunication facilities subject to the approval of a wireless facility permit and located within public rights-of-way shall comply with the following requirements to the fullest extent permitted by state and federal law:

(A) *Construction.* These standards are intended to exert the maximum authority available to the city in the regulation of personal wireless telecommunication facilities under applicable state and federal law but not to exceed that authority. Accordingly, this section shall be construed and applied in light of any such limits on the city's authority. The purpose of this section 115.006 is to regulate personal wireless telecommunications facilities proposed for sites within public rights-of-way consistently with the rights conferred on telephone corporations by Public Utilities Code §§ 7901 and 7901.1 and to address the aesthetic and safety concerns unique to such proposals due to their highly visible location in rights-of-way that must be safely shared with pedestrians, motorists and other utility infrastructure.

(B) *Application Content.* Applications for the approval of personal wireless telecommunication facilities within the public rights-of-way

shall include the following information, in addition to all other information required by Section 115.004(D) above:

- (a) The applicant shall provide certification that the facility is for the use of a telephone corporation or state the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

(C) *Guidelines.* All personal wireless telecommunication facilities located within a public right-of-way shall be designed as follows:

- (a) Ground-mounted equipment shall be screened, to the fullest extent possible, through the use of landscaping, walls, or other decorative feature, as approved by the commission.
- (b) Facilities located within a designated Historic Design Review District shall be stealth facilities, with all equipment, excluding required electrical meter cabinets, located underground or pole-mounted. Required electrical meter cabinets shall be screened as approved by the commission.
- (c) Personal wireless telecommunication facilities not located within a Historic Design Review District designated by the city shall be designed to place all equipment underground, excluding required electrical meters. However, if such facilities cannot be placed underground, ground-mounted equipment may be installed up to a height of five feet and to a footprint of fifteen (15) square feet.
- (d) Pole-mounted equipment shall not exceed six cubic feet.
- (e) Pole-mounted antennas shall adhere to the following guidelines:
 - (1) If an antenna cannot be mounted as set forth in subsection (i), it may be mounted in accordance with subsection (ii). If an antenna cannot be mounted as set forth in either subsection (i) or (ii), it may be mounted in accordance with subsection (iii):
 - i. A stealth facility mounted on an existing, collocated monopole or tower;
 - ii. A stealth facility mounted on an existing steel or concrete pole, including a light standard; or
 - iii. A stealth facility mounted on a new steel, wood or concrete pole but only if applicants can show that there is no existing infrastructure within 200 feet along the subject right-of-way that is available and technically feasible to support a small cell.
 - (2) All installations shall be engineered to withstand high wind loads. An evaluation of high wind load capacity shall include

the impact of an additional antenna installation on a pole with existing antennae.

- (3) The maximum height of any antenna shall not exceed twenty-four (24) inches above the height of a pole or tower other than a streetlight pole, nor six feet above the height of a streetlight pole, nor shall any portion of the antenna or equipment mounted on a pole be less than sixteen (16) feet above any drivable road surface. All installations on utility poles shall fully comply with California Public Utilities Commission General Order 95 as it now exists or may hereafter be amended.
- (4) A freestanding telecommunications tower or monopole shall be set back a distance of at least one hundred fifty (150) percent of the height of the tower to the nearest structure designed for occupancy.
- (f) Equipment shall be located so as not to cause: (i) any physical or visual obstruction to pedestrian or vehicular traffic, (ii) inconvenience to the public's use of a public right-of-way, or (iii) safety hazards to pedestrians and motorists. In no case shall ground-mounted equipment, walls, or landscaping be less than eighteen (18) inches from the front of the curb.
- (g) Facilities shall not be located within five hundred (500) feet of another wireless facility on the same side of a street.
- (h) No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act.

(D) *Findings.* In addition to the findings required in Section 115.004(K) above, no proposed personal wireless telecommunication facility subject to the approval of a wireless facility permit within a public right-of-way may be approved unless the following findings are made:

- (a) The proposed facility has been designed to blend with the surrounding environment, with minimal visual impact on the public right-of-way.
- (b) The proposed facility will not have an adverse impact on the use of the public right-of-way, including but not limited to, the safe movement and visibility of vehicles and pedestrians.

(E) *Conditions of Approval.* In addition to compliance with the guidelines outlined in subsection (C) of this section and the conditions of approval listed in section 115.004(H) above, all facilities approved under this section 115.006 shall be subject to the following conditions:

- (a) Any approved wireless communication facility within a public right-of-way shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the

Director to: (i) protect the public health, safety, and welfare; (ii) prevent interference with pedestrian and vehicular traffic; or (iii) prevent damage to a public right-of-way or any property adjacent to it. Before Director imposes conditions, changes, or limitations pursuant to this paragraph, he or she shall notify the applicant or operator, in writing, by mail to the address set forth in the application or such other address as may be on file with the city. Such change, new limitation or condition shall be effective twenty-four (24) hours after deposit of the notice in the United States mail.

- (b) The applicant or operator of the personal wireless telecommunication facility shall not move, alter, temporarily relocate, change, or interfere with any existing public facility, structure or improvement without the prior written consent of the city, and the owner in the circumstance where the owner is not the city. No structure, improvement or facility owned by the city shall be moved to accommodate a personal wireless telecommunication facility unless: (i) the city determines, in its sole and absolute discretion, that such movement will not adversely affect the city or surrounding residents or businesses, and (ii) the applicant or operator pays all costs and expenses related to the relocation of the city's facilities. Every applicant or operator of any personal wireless telecommunication facility shall assume full liability for damage or injury caused to any property or person by his, her, or its facility. Before commencement of any work pursuant to an encroachment permit issued for any personal wireless telecommunication facility within a public right-of-way, an applicant shall provide the city with documentation establishing to the city's satisfaction that the applicant has the legal right to use or interfere with any other facilities within the public right-of-way to be affected by applicant's facilities.
- (c) Should any utility company offer electrical service to a wireless facility which service does not require the use of a meter cabinet, the applicant or operator of the facility shall at its cost remove the meter cabinet and any foundation thereof and restore the area to its prior condition.

§ 115.007 REQUIREMENTS FOR PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES SUBJECT TO A WIRELESS FACILITY MINOR MODIFICATION PERMIT

This section governs applications for certain modifications to existing personal wireless telecommunications facilities, as specified.

(A) *Purpose.* Section 115.007 is intended to comply with the city's obligations under federal law, which provides that the city "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (47 U.S.C. § 1455, subd. (a)(1), adopted as Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L No. 112-96, 126 Stat. 156.) This section creates a process for the city to review an application for a wireless facility minor modification permit submitted by an applicant who asserts that a proposed collocation or modification to an existing personal wireless telecommunications facility is covered by this federal law and to determine whether the city must approve the proposed collocation or modification. The city's review of these applications is structured to comply with the requirements of Title 47, United States Code, section 1455 and the Federal Communications Commission's regulations implementing this federal law, adopted on December 17, 2014 and codified at 47 C.F.R. §§ 1.40001, et seq. Consistent with section 115.001, this section is intended to promote the public's health, safety, and welfare, and shall be interpreted consistent with the federal Telecommunications Act of 1996 (Pub.L. No. 104-104, 110 Stat. 56), Title 47, United States Code, section 1455, and applicable Federal Communications Commission regulations and court decisions considering these laws and regulations.

(B) *Applicability.* An applicant seeking approval of a collocation or modification to an existing personal wireless telecommunication facility which the applicant contends is within the protection of Title 47, United States Code, section 1455 shall apply for the following at the same time: (i) a wireless facility minor modification permit, in addition to (ii) an encroachment permit from the public works department (if the required by applicable provisions of this Code), and (iii) any other permit required by applicable provisions of this Code including a building permit or tree permit. No collocation or modification to an existing personal wireless telecommunication facility shall be installed unless the applicant or operator has obtained either a wireless facility minor modification permit or a wireless facility permit.

(C) *Application Content.* All applications for a wireless facility minor modification permit must include the following items.

(a) *Application Form.* The city's standard application form, available on the city's website or from the Planning and Public Works Department, as may be amended.

- (b) *Application Fee.* An application fee as established by the city council by resolution.
- (c) *Mailing Labels and Notices.* Applicant shall submit a legible mailing list and stamped envelopes, stamped and addressed with sufficient postage, for all properties and record owners of properties entitled to receive notice for administrative and public hearing reviews.
- (d) *Project Narrative and Justification.* The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed collocation or modification of an existing wireless facility is within the protection of Title 47, United States Code, section 1455 and written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location in accordance with the location requirements of Section 115.004(E).
- (e) *Independent Consultant Deposit.* An independent consultant fee deposit, if required by the council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
- (f) *Site and Construction Plans.* Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - (1) A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - (2) A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - (3) A depiction of all existing and proposed utility runs and points of contact.
 - (4) A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - (5) For proposed collocations or modifications to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on February 22, 2012, or as approved if constructed after February 22, 2012. For proposed collocations or modifications to base stations, the plans must include scaled plan views and all four (4) elevations that

depict the physical dimensions of the base station as it existed on February 22, 2012, or as approved if constructed after February 22, 2012.

(6) *Demolition Plan.*

- (a) *Visual Simulations.* A visual analysis that includes (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palette for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
- (b) *Statement Asserting that Section 6409 Applies.* A written statement asserting that the proposed collocation or modification is an "eligible facilities request" and does not result in a substantial change in the physical dimensions of the facility's wireless tower or base station, as defined by Section 6409, Title 47, United States Code, section 1455, and justifying that assertion. The written statement shall identify and discuss each required finding for approval of a wireless facility minor modification permit under 115.007(E) the facts that justify the request for the Director to make each finding.
- (c) *Prior Permits.* True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the Federal Communications Commission's regulations implementing this federal law.
- (d) *Affirmation of Radio Frequency Standards Compliance.* An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna

RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination Of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."

- (e) *Structural Analysis.* A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed wireless telecommunications facility complies with all applicable building codes.
- (f) *Noise Study.* A noise study, prepared, signed, and sealed by a California-licensed engineer, for the proposed personal wireless telecommunication facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed modification(s) will not alter the existing noise levels or operational equipment which creates noise.
- (g) *Other Permits.* An application for a wireless facility minor modification permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or modification to an existing personal wireless telecommunications facility, including a building permit, an encroachment permit (if applicable), and an electrical permit (if applicable).
- (h) *Other Information.* Such other information as the city may require, as specified in publically available materials.

(D) *Application Review, Notice, and Hearing.* Each application for a wireless facility minor modification permit shall be reviewed by the Director.

Administrative Review Process. Each application for a wireless facility minor modification permit shall be reviewed by the Director in the following manner:

(a) Within 30 calendar days after the Director receives a duly-filed application, the Director shall review the application for completeness, and if any application does not contain all the materials required shall send written notice to the applicant that identifies the missing or incomplete requirements.

(b) Not less than 10 calendar days prior to the date on which the administrative decision will be made, the Director shall give notice of the proposed requested application by mail or delivery to record of owner located within three hundred (300) feet of the proposed site.

(c) If no hearing is requested by the applicant or other affected person, or if no responses are received in opposition to the request within the prescribed time period, then the Director shall issue the permit subject to conditions determined by the Director.

(d) If a hearing is requested by the applicant or other affected person, or if any responses are received in opposition to the request, the Director shall forward the application to the Planning Commission for formal public hearing and considerations. When the application is forwarded to the Planning Commission, the applicant shall be responsible for paying any additional application fees and providing any additional permit application materials. Under federal law, the city must approve or deny an application for a wireless facility minor modification permit, together with any other city permits required for a proposed wireless facility, within sixty (60) days after the applicant submits the application for a wireless facility minor modification permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a wireless facility minor modification permit application within the sixty-day review period, excluding tolling period, will result in the permit being deemed granted by operation of law.

Public Hearing Review Process. Each application for a wireless facility minor modification permit shall be reviewed by the Director in the following manner:

(a) Within 30 calendar days after the Director receives a duly-filed application, the Director shall review the application for completeness, and if any application does not contain all the materials required shall send written notice to the applicant that identifies the missing or incomplete requirements.

(b) Prior to a duly notice public hearing, the Director shall give notice of the proposed requested application by mail or delivery to

record of owner located within three hundred (300) feet of the proposed site.

Under federal law, the city must approve or deny an application for a wireless facility minor modification permit, together with any other city permits required for a proposed wireless facility, within sixty (60) days after the applicant submits the application for a wireless facility minor modification permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a Wireless Facility Permit application within the sixty-day review period, excluding tolling period, will result in the permit being deemed granted by operation of law.

Applications Deemed Withdrawn. To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this chapter will be automatically withdrawn by the applicant when the applicant fails to tender a substantive response to the Director within sixty (60) calendar days after the Director deems the application incomplete in a written notice to the applicant. As used in this subsection (D), a "substantive response" must include the materials identified as incomplete in the Director's notice.

(E) Findings Required.

- (a) The Director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing wireless tower on private property only if each of the following findings can be made:
 - (1) The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities;
 - (2) The proposed collocation or modification does not increase the height of the existing personal wireless telecommunication facility above its lowest height on February 22, 2012, or as approved if constructed after February 22, 2012, by more than ten (10) percent or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;
 - (3) The proposed collocation or modification does not increase the width of the facility by more than twenty (20) feet or

- the width of the tower at the level of the appurtenance, whichever is greater;
- (4) The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4);
 - (5) The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access or utility easements;
 - (6) The proposed collocation or modification does not defeat any existing concealment elements of the support structure; and
 - (7) The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by Section 6409, Title 47, United States Code, section 1455, subdivision (a).
- (b) The Director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing base station on private property only if each of the following findings can be made:
- (1) The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;
 - (2) The proposed collocation or modification does not increase the height of the existing personal wireless telecommunication facility above its lowest height on February 22, 2012, or as approved if constructed after February 22, 2012, by more than ten (10) percent or ten (10) feet, whichever is greater;
 - (3) The proposed collocation or modification does not increase the width of the facility by more than six (6) feet;
 - (4) The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4);
 - (5) The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access and utility easements;

- (6) The proposed collocation or modification does not defeat any existing concealment elements of the support structure; and
 - (7) The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by Section 6409, Title 47, United States Code, section 1455, subdivision (a).
- (c) The Director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing wireless tower or base station in the public right-of-way only if each of the following findings can be made:
- (1) The applicant proposes a collocation or modification to either (i) a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities or (ii) a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;
 - (2) The proposed collocation or modification does not increase the height of the existing personal wireless telecommunication facility above its lowest height on February 22, 2012, or as approved if constructed after February 22, 2012, by more than ten (10) percent or ten (10) feet, whichever is greater;
 - (3) The proposed collocation or modification does not increase the width of the facility by more than six (6) feet;
 - (4) The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4);
 - (5) The proposed collocation or modification does not involve either (i) the installation of any new equipment cabinets on the ground, if none already exist, or (ii) the installation of ground equipment cabinets that are more than ten (10) percent larger in height or overall volume than any existing ground cabinets;

- (6) The proposed collocation or modification does not involve any excavation outside the area in proximity to the existing ground-mounted equipment in the public right-of-way;
- (7) The proposed collocation or modification does not defeat any existing concealment elements of the existing structure; and
- (8) The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by Section 6409, Title 47, United States Code, section 1455, subdivision (a).

(F) *Conditions of Approval for Wireless Facility Minor Modification Permits.* In addition to any other conditions of approval permitted under federal and state law and this Code that the Director deems appropriate or required under this Code, all wireless facility minor modification permits under this subsection, whether approved by the Director or deemed granted by the operation of law, shall include the following conditions of approval:

- (a) *No Automatic Renewal.* The grant or approval of a wireless facility minor modification permit shall not renew or extend the underlying permit term.
- (b) *Compliance with Previous Approvals.* The grant or approval of a wireless facility minor modification permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by Section 6409, subdivision (a).
- (c) *As-Built Plans.* The applicant shall submit to the Director an as-built set of plans and photographs depicting the entire personal wireless telecommunications facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- (d) *Indemnification.* To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection

therewith. The applicant shall pay such obligations as they are incurred by city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.

- (e) *Compliance with Applicable Laws.* The applicant shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this Code, any permit issued under this Code, or all other applicable laws and regulations.
- (f) *Compliance with Approved Plans.* The proposed project shall be built in compliance with the approved plans on file with the planning division.
- (g) *Violations.* The facility shall be developed, maintained, and operated in full compliance with the conditions of the wireless facility minor modification permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
- (h) In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or modification granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
- (i) The grant, deemed-grant or acceptance of wireless facility minor modification permit shall not waive and shall not be construed or deemed to waive the city's standing in a court

of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any wireless facility minor modification permit issued pursuant to Title 47, United States Code, section 1455 or this Code.

(G) Wireless Facility Minor Modification Permit Denial Without Prejudice.

- (a) Grounds for denial without prejudice. The Director may deny without prejudice an application for a wireless facility minor modification permit in any of the following circumstances:
 - (1) The Director cannot make all findings required for approval of a wireless facility minor modification permit;
 - (2) The proposed collocation or modification would cause the violation of an objective, generally applicable law protecting public health or safety;
 - (3) The proposed collocation or modification involves the removal and replacement of the facility's entire supporting structure; or
 - (4) The proposed collocation modification does not qualify for mandatory approval under Title 47, United States Code, section 1455, as may be amended or superseded, and as may be interpreted by any order of the Federal Communications Commission or any court of competent jurisdiction.
- (b) *Procedures For Denial Without Prejudice.* All wireless facility minor modification permit application denials shall be in writing and shall include (i) the decision date; (ii) a statement that the city denies the permit without prejudice; (iii) a short and plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.
- (c) *Submittal After Denial Without Prejudice.* After the Director denies a wireless facility minor modification permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:
 - (1) Submit a new wireless facility minor modification permit application for the same or substantially the same proposed collocation or modification;
 - (2) Submit a new wireless facility permit application for the same or substantially the same proposed collocation or modification; or

(3) Submit an appeal of the Director's decision.

(d) *Costs to Review a Denied Permit.* The city shall be entitled to recover the reasonable costs for its review of any wireless facility minor modification permit application. In the event that the Director denies a wireless facility minor modification permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a wireless facility permit application or submit a wireless facility minor modification permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

§ 115.008 REQUIREMENTS FOR SMALL WIRELESS FACILITIES PERMITS

This section governs applications for small wireless facilities permits.

- (A) *Purpose.* Section 115.008 is intended to comply with the city's obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(c)(7) and 1455. This section creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to determine whether the city must approve the proposed collocation or deployment.
- (B) *Applicability.* An applicant seeking approval of a collocation to an existing structure or a deployment to a new structure, which the applicant contends is within the protection of Title 47, United States Code, section 1455 shall apply for the following at the same time: (i) a small wireless facility permit, (ii) an encroachment permit from the Planning and Public Works Department (if required by applicable provisions of this Code), and (iii) any other permit required by applicable provisions of this Code including a building permit or a tree permit.
- (C) *Application Content.* All applications for a small wireless facility Permit must include the following items:

- (1) *Application Form.* The city's standard application form, available on the city's website or from the Planning and Public Works Department, as may be amended.
- (2) *Application Fee.* An application fee as established by the Council by resolution.
- (3) *Mailing Labels and Notices.* Applicant shall submit a legible mailing list and stamped envelopes, stamped and addressed with sufficient postage, for all properties and record owners of properties entitled to receive notice for administrative and public hearing reviews.
- (4) *Project Narrative and Justification.* The applicant shall submit a written statement that explains in plain factual detail whether and why the collocation to an existing structure or a deployment to a new wireless structure is within the protection of Title 47, United States Code, section 1455. Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location in accordance with the location requirements of Section 115.004(E).
- (5) *Independent Consultant Deposit.* An independent consultant fee deposit, if required by the council by resolution to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
- (6) *Site and Construction Plans.* Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - (a) A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - (b) A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - (c) A depiction of all existing and proposed utility runs and points of contact.
 - (d) A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.

- (e) For proposed collocation or deployment to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on
 - (f) A demolition plan.
- (7) *Visual Simulations.* A visual analysis that includes (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
- (8) Statement Asserting that 47 C.F.R. section 1.6001 et seq. applies.
- (9) *Prior Permits.* True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the Federal Communications Commission's regulation implementing this federal law.
- (10) *Affirmation of Radio Frequency Standards Compliance.* An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each

Appendix A form only in wattage units of "effective radiated power."

- (1) *Structural Analysis*. A structural analysis, prepared, signed, and sealed by a California-licensed engineer, for the proposed small wireless facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed facility will not alter the existing noise levels or operational equipment which creates noise.
 - (2) *Other Permits*. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).
- (D) *Application Review, Notice, and Hearing*. Each application for a Small Wireless Facility Permit shall be reviewed by the Director in the following manner:
- (a) Within 30 calendar days after the Director receives a duly-filed application, the Director shall review the application for completeness, and if any application does not contain all the materials required shall send written notice to the applicant that identifies the missing or incomplete requirements.
 - (b) The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure.
- (E) *Tolling Period*. Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or

information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.

(F) Standards Governing Approval by Director.

- (a) The Director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:
- (1) The existing structure was constructed and maintained with all necessary permits in good standing.
 - (2) The existing structure is fifty (50) feet or less in height, including any antennas, or the existing structure is no more than ten (10) percent taller than other adjacent structures.
 - (3) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.
 - (4) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment serving the facility, is no more than 28 cubic feet in volume.
 - (5) The small wireless facilities do not extend the existing structure on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.
 - (6) The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 - (7) The small wireless facility is not located on tribal lands, as defined under 36 C.F.R. section 800.16(x).
 - (8) The proposed collocation is consistent with the wireless facility permit preferred zones and locations requirement of Section 115.004(E).
 - (9) The proposed collocation is consistent with the design and development standards of Section 115.004(F), except that sub-sections 115.004(F)(1) & (6) do not apply.

- (10) The proposed collocation is consistent with the independent expert review provisions of Section 115.004(E).
 - (11) The proposed collocation is consistent with the conditions of approval provisions of Section 115.004(H).
 - (12) For collocations not located within the public right-of-way, the proposed collocation shall be consistent with the standards of Section 115.005.
 - (13) For collocation located within the public right-of-way, the proposed collocation shall be consistent with Section 115.006, except that sub-sections 115.006(C)(g), 115.006(D) and 115.006(E) do not apply.
 - (14) The proposed collocation would be in the most preferred location and configuration within 250 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within 250 feet would be technically infeasible, applying the preference standards of this section.
 - (15) The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
- (b) The Director must approve an application to deploy a small wireless facility using a new structure only if each of the following findings can be made:
- (1) The new structure was constructed and maintained with all necessary permits in good standing;
 - (2) The new structure is fifty (50) feet or less in height, including any antennas, or the new structure is no more than ten (10) percent taller than other adjacent structures
 - (3) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
 - (4) All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing equipment associated with the facility, is no more than 28 cubic feet in volume;
 - (5) The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 - (6) The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x);

- (7) For new structures not located within the public right-of-way, the proposed facility shall be consistent with the standards of Section 115.005
- (8) For new structures located within the public right-of-way, the proposed facility shall be consistent with subsection 115.006, except that sub-sections 115.006(C)(g), 115.006(D) and 115.006(E) do not apply.
- (9) The proposed project would be in the most preferred location and configuration within 250 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within 250 feet would be technically infeasible, applying the preference standards of this section.
- (10) The proposed collocation is designed as a stealth facility, to the maximum feasible extent.

(G) Small Cell Location and Configuration Preferences. The city prefers that small wireless facilities in the public right of way or in the equivalent right of way on homeowners' association owned lands and private streets be configured on the following support structures, in order of preference from most to least preferred: existing or replacement street light standard; existing or replacement concrete or steel utility pole; existing or replacement wood utility pole; new street light standard; new utility pole. The city prefers that small wireless facilities outside the public right of way be configured on the following support structures, in order of preference from most to least preferred: on existing, approved wireless facility support structures operating in compliance with this Code; on existing buildings or non-tower structures; on existing or replacement utility poles or towers; in new towers meeting the height requirements of the applicable FCC regulations.

(H) Conditions of Approval for Small Wireless Facility Permits. In addition to any other conditions of approval permitted under federal and state law and this Code that the Director deems appropriate or required under this Code, all small wireless facility permits under this subsection shall include the following conditions of approval:

- (a) *No Automatic Renewal.* The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.
- (b) *Compliance with Previous Approvals.* The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.

- (c) *As-Built Plans.* The applicant shall submit to the Director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- (d) *Indemnification.* To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless the city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.
- (e) *Compliance with applicable laws.* The applicant shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.
- (f) *Compliance with approved plans.* The proposed project shall be built in compliance with the approved plans on file with the Planning Division.
- (g) *Violations.* The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code,

the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

- (h) In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
 - (i) The grant, deemed-grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the City's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any small wireless facility permit issued pursuant to Title 47, United States Code, section 1455 or this code.
- (I) Small Wireless Facility Permit Denial Without Prejudice
- (a) Grounds for denial without prejudice. The Director may deny without prejudice an application for a small wireless facility permit in any of the following circumstances:
 - (1) The Director cannot make all findings required for approval of a small wireless facility permit;
 - (2) The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;
 - (3) the proposed collocation or deployment involves the removal and replacement of an existing facility's entire supporting structure; or
 - (4) the proposed collocation or deployment does not qualify for mandatory approval under Title 47, United States Code, section 1455, as may be amended or superseded, and as may be interpreted by any order of the Federal Communications Commission or any court of competent jurisdiction.
 - (b) Procedures for denial without prejudice. All small wireless facility permit application denials shall be in writing and shall

- include (i) the decision date; (ii) a statement that the City denies the permit without prejudice; (iii) a short and plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.
- (c) Submittal after denial without prejudice. After the Director denies a small wireless facility permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:
- (a) submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment;
 - (b) submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
 - (c) submit an appeal of the Director's decision.
- (d) Costs to review a denied permit. The City shall be entitled to recover the reasonable costs for its review of any small wireless facility permit application. In the event that the Director denies a small wireless facility permit application, the City shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a small wireless facility permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

§115.009 APPEALS

- (A) Appeal of Action by the Director. Unless otherwise specified in this chapter, any interested person may file an appeal of a Director's decision. The appeal shall be filed in writing with the Planning and Public Works Department within ten (10) calendar days after the Director's decision is issued and shall state the grounds for appeal and any specific action the appellant requests the city to take. The appropriate fee, established from time to time by resolution of the city council, shall be paid at time of appeal. If no appeal is timely filed, the Director's decision is final. Appeal of the Planning and Public Works Director of an Administrative Review shall be forwarded to the Planning Commission.
- (B) Where an appeal is timely filed, the Director shall prepare a staff report regarding the original decision and shall submit the report to the Planning Commission. The Director shall set a hearing on

the appeal, which shall be conducted pursuant to §162.06. Notice of the hearing shall be given pursuant to §162.08.

- (C) Appeal of Action by the Planning Commission. Unless otherwise specified in this chapter, any interested person may appeal a final decision of the Planning Commission. The appeal shall be filed in writing with the City Clerk within ten (10) calendar days after the decision and shall state the grounds for appeal and any specific action the appellant requests the city take. The appropriate fee, established from time to time by resolution of the city council, shall be paid at the time the appeal is filed. If no appeal is timely filed, the Commission's decision is final.
- (D) Where an appeal is timely filed, the City Manager shall prepare a staff report regarding the original decision and shall submit the report to the City Council along with the written notice of appeal submitted by the appellant, and shall make the written record available to the City Council. The City Manager shall set a hearing on the appeal, which shall be conducted pursuant to §162.06. Notice of the hearing shall be given pursuant to §162.08.
- (E) The City Council shall hear the appeal at a regular City Council meeting or at a special meeting of the City Council called for the purpose of hearing the appeal, after allowing for sufficient time for the City Manager to prepare the written report and compile the written record. To prevent applicants from withholding information or otherwise abusing the appeal process, the City Council has the discretion but is not required to hear additional evidence, and may decide the matter solely on the record that was before the Planning Commission.
- (F) The City Council may accept or reject, wholly or in part, or may modify, the decision or any recommendations made by the Planning Commission. If the decision of the City Council regarding the wireless facility permit appeal is to deny the wireless facility permit or conditionally approve the wireless facility permit, the City Council shall direct the City Manager to prepare written findings referencing substantial evidence in the city's written administrative record and such written finding shall be provided to the City Council for adoption. The applicant and any appellant on the application shall receive a copy of the final written decision approved by the City Council.

§ 115.010 MAINTENANCE

- (A) All wireless communication facilities must comply with all standards and regulations of the FCC, and any other State or

Federal government agency with the authority to regulate wireless communication facilities.

- (B) The site and the wireless communication facility, including all landscaping, fencing, and related transmission equipment must be maintained in a neat and clean manner and in accordance with all approved plans.
- (C) All graffiti on wireless communication facilities must be removed at the sole expense of the permittee within 48 hours of notification.
- (D) A wireless communication facility located in the public right-of-way may not unreasonably interfere with the use of any City property or the public right-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic, and interference with any other city or public utilities.
- (E) If any FCC, CPUC or other required license or approval to provide communication services is ever revoked, the permittee must inform the Director of the revocation within 10 days of receiving notice of such revocation.

§ 115.011 OWNERSHIP TRANSFERS

Upon transfer of an approved wireless communication facility or any rights under the applicable permit or approval, the permittee of the facility must within 30 days of such transfer provide written notification to the Director of the date of the transfer and the identity of the transferee. The Director may require submission of any supporting materials or documentation necessary to determine that the facility is in compliance with the existing permit or approval and all of its conditions including, but not limited to, statements, photographs, plans, drawings, and analysis by a qualified engineer demonstrating compliance with all applicable regulations and standards of the city, FCC, and CPUC.

§ 115.012 REVOCATION OF A WIRELESS FACILITY PERMIT

- (A) A wireless facility permit may be revoked if permittee is not in compliance with permit conditions, if the permit conditions are not enforceable, or for a failure to comply with any provision of the code relating to the permit, or relating to the wireless facility associated with the permit ("default event"). By way of example

and not limitation, a refusal to timely remove facilities located in the rights-of-way where required in connection with a public works project would be a default event.

(B) The city may revoke a wireless facility permit only after:

- (1) Written notice of the default event has been provided to the wireless facility permit holder.
- (2) The wireless facility permit holder has been afforded a reasonable opportunity to cure and comply with its permit, or demonstrate that no default event occurred.
- (3) If the wireless facility permit holder fails to cure, the City Council, or designee, shall conduct a noticed public hearing where the wireless facility permit holder shall be afforded an opportunity to speak and be heard and to provide written material prior to the hearing. If the City Council or its designee, after the public hearing, finds that the wireless facility or the wireless facility permit holder has violated any law regulating the wireless facility or has failed to comply with the requirements of this chapter, the wireless facility permit, any applicable agreement or any condition of approval, the City Council may revoke the permit.
- (4) Upon revocation, the City Council may require the removal of the wireless facility or take any other legally permissible action or combination of actions necessary to protect the health and welfare of the City.

§ 115.013 VIOLATIONS

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person, firm, partnership, or corporation violating any provision of this chapter or failing to comply with any of its requirements will be deemed guilty of an infraction and upon conviction thereof will be punished by fine not exceeding \$1,000.00. Each such person, firm, partnership, or corporation will be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, firm, partnership, or corporation, and will be deemed punishable therefor as provided in this chapter. The remedies specified in this chapter shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

§ 115.014 SEVERABILITY

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause, or phrase in this chapter unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this chapter and shall not affect the validity of the remaining portions of this chapter. The city hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause, or phrase in this chapter irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or phrases in this chapter might be declared unconstitutional, preempted, or otherwise invalid.